

# Washington Lawyer

APRIL 2009

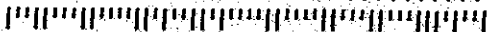
THE OFFICIAL JOURNAL OF THE DISTRICT OF COLUMBIA BAR

## Language Barriers to Justice

By Kathryn Alfisi

WASHINGTON DC 20006-2806  
1600 K ST NW  
MEZZANINE LEVEL  
APA LEGAL RESOURCE CENTER  
MS. MARITA ETICUBANEZ

\*\*\*\*\*CAR-RT LOT#MC-051



0010 0049

019331

# Language Barriers to Justice

By Kathryn Alfisi

Many of us have experienced the frustration of coming up against a language barrier, whether in a foreign country or right in the United States. Fortunately, these are usually temporary situations. For limited English proficient (LEP) and non-English proficient (NEP) individuals, however, the constant struggle to communicate can seem insurmountable and have serious consequences.

Jong Yeol Lee found this out in January 2008 when police arrived at 3 a.m. at his Virginia home to arrest him on a District of Columbia warrant. According to Lee, who is a Korean-speaking permanent U.S. resident with limited English skills, he was unable to communicate with the arresting officers and was not provided an interpreter during the four days he was held at a detention center in Fairfax County, or when he was transferred to a station in the District. The Metropolitan Police Department (MPD) released Lee within several hours without charges after determining that his arrest had been a mistake.

Angry over his treatment, Lee contacted the Asian Pacific American Legal Resource Center (APALRC) to see if legal action could be taken against the MPD. As a legal services provider for Asian language speakers in the Washington metropolitan area, APALRC is no stranger to language access issues. Lee's case, however, presented something different.

"When we deal with language access issues, it's usually when people don't have access to their food

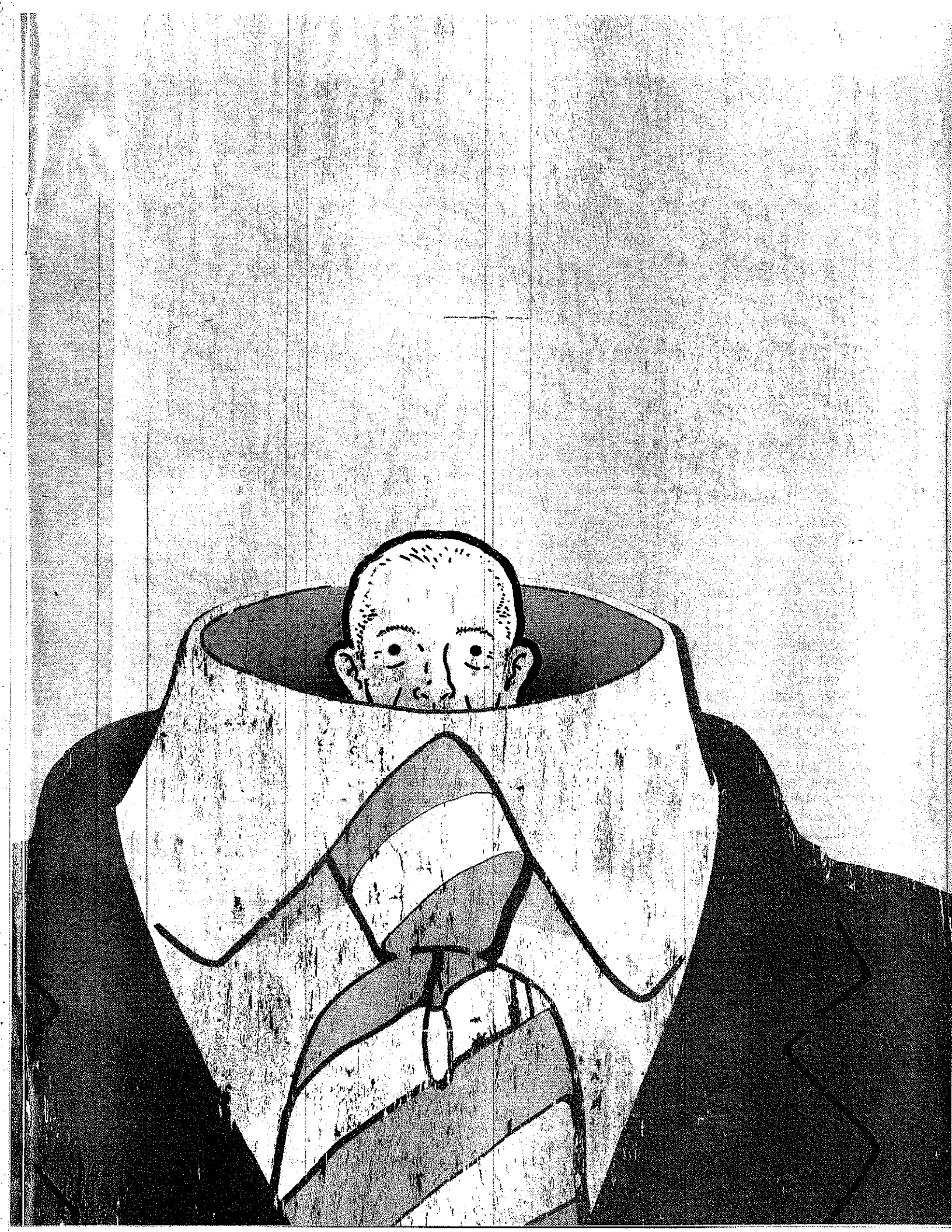
stamps or when they get notices sent to them only in English, but this was different. This was a guy who lost his liberty, so it becomes easily apparent just how important language access is—this guy went to prison for no reason," APALRC staff attorney Nadia Firozvi says.

To Firozvi, the MPD's actions were a clear violation of the D.C. Language Access Act of 2004, which requires District agencies with major public contact to provide interpretation, and sometimes translation, services.

"We looked at this as the perfect first case. This was such egregious behavior that if they found that the government had followed the law, we knew that something was wrong," Firozvi says.

APALRC filed the first language access complaint against the MPD through the D.C. Office of Human Rights (OHR), which performed an investigation and found the MPD to be noncompliant with the Language Access Act.

The Lee case marked the first time this type of complaint saw its way through investigation and resolution, which is somewhat surprising given the



"Most people think of interpretation as just word substitution, but it's so much more than that because you're not translating words, you're translating meaning. In many instances you're interpreting cultural import, and you have to have a little cultural understanding."

—Suzan Kern, immigration lawyer at Hunton & Williams LLP and former freelance interpreter

number of LEP and NEP people living in the District.

Audrey Singer and Jill Wilson, demographer and research analyst, respectively, at The Brookings Institution, released a study in 2004 (to coincide with the passage of the Language Access Act) analyzing the District's language abilities and needs based on data culled from the U.S. Census Bureau.

The study showed that 17 percent of District residents speak a language other than English at home, and that the number of LEP residents increased from about 5 to 7 percent between 1990 and 2000. (The Census Bureau defines LEP as anyone over the age of five who speaks another language at home and describes him- or herself as speaking English less than "very well.")

According to Singer, the immigrant population in the Washington metropolitan area has grown by almost a quarter of a million since 2000, so that there are now more than 1 million foreign-born residents in Washington.

"We have this real issue—the population census is predicting that the U.S. will become a minority-majority country by 2042 or 2048; our ability to serve that population has to change," says Jennifer Deng-Pickett, director of the D.C. Language Access Coalition, an alliance of 29 community-based and civil rights organizations advocating for LEP and NEP residents in the District.

Without language access measures in place, the LEP and NEP population faces an uphill battle in availing of essential medical, social, and legal services, the consequences of which, as seen in the Lee case, can be very serious.

### Interpreters in the Courtroom

Navigating the legal world can be tough for anyone, but for someone who doesn't speak the language, it can seem impossible.

To remedy this, some courts, including the Superior Court of the District of Columbia, offer materials in languages other than English and provide interpreters. Unfortunately, courts often face a shortage of interpreters who are qualified, have had training, and passed an exam to prove they have the skills necessary to work in a courtroom setting.

According to an informal survey conducted by Isabel Framer, chair of the National Association of Judiciary Interpreters and Translators (NAJIT), there are about 3,000 certified interpreters in the country, 2,500 of which speak Spanish.

Framer says the lack of qualified interpreters is nothing new, but the issue has garnered more attention in recent years due to

the continuing influx of immigrants, the events of 9/11, and an executive order signed in 2000 and the resulting U.S. Department of Justice policy guidance on language access for LEP people.

Suzan Kern, immigration lawyer at Hunton & Williams LLP and former freelance interpreter, says the shortage partly can be attributed to low pay and the job's high-stress environment.

"Most people think of interpretation as just word substitution, but it's so much more than that because you're not translating words, you're translating meaning. In many instances you're interpreting cultural import, and you have to have a little cultural understanding. It takes a lot of skills to be an interpreter, and that takes training and technique," Kern says.

Because the job is so demanding with little room for error, most courts prefer to use certified interpreters, which is not always possible. The courts must then turn to noncertified freelance interpreters.

Unlike the case of interpreters for the deaf or hard of hearing, there is no national certification program for foreign language interpreters: each state defines its own way of qualifying an interpreter. While there are various trainings and exams available for interpreters, only a state supreme court can deem a certification exam valid and reliable.

At the federal court level, there is a court interpreter certification exam that is also accepted by many state courts. Federal courts are required by statute to use certified interpreters, unless one is not reasonably available.

The D.C. Superior Court prefers to use interpreters who are federally- or U.S. State Department-certified, but it will use interpreters who do not fit such criteria if they pass an exam administered by the court. Uncertified interpreters are paid less and not used in trial settings, however.

Roy S. Wynn Jr., director of the D.C. Courts' Special Operations Division, says the court mostly deals with Spanish speakers, but it offers services in numerous other languages as well. While the Superior Court has a certain number of contract interpreters available on a daily basis, it must sometimes bring in interpreters from other cities.

Wynn says the District is unique in that the Superior Court can rely on the State Department for interpreters, although he admits that at times a trial has to be postponed because no interpreter can be found.

Having to reschedule a hearing or trial is not uncommon, Framer says, and this type of interruption underscores why





interpreters play such an important role in the courtroom.

"Individuals, whether they work in the court system or quasi-judicial setting, need to understand that the interpreter is the nexus among all of the parties, and if the interpreter is not competent, it can render everyone incompetent. Nationally, there is a great need to take action and increase the pool of qualified and certified interpreters because it does affect the entire country's ability to carry out its own work," she says.

"We've come a little further from where we were before. When I started [as a court interpreter], if you told someone that you were an interpreter, that was sufficient and no one would really check your references or training, although in some places where there are no rules in place, an individual can still get up and say, 'I'm an interpreter' and that's it. I have to say that a lot of this is due to lack of training and knowledge on the part of legal professionals, including the judiciary, about what's at stake because it hasn't been raised before. They may think that it's okay for a friend to act as an interpreter; many are still under the belief that being bilingual is sufficient for being a court interpreter, and that's very far from the truth."

Courts often cite lack of financial resources as the reason for not having an interpreter program in place.

In an effort to address this problem, the Senate Judiciary Committee approved in 2008 a bill sponsored by Sen. Herb Kohl (D-Wis.) authorizing \$15 million a year for five years to fund a state court interpreter grant program. States applying for the program would be eligible for a \$100,000 base grant, while \$5 million

would be set aside for states that are able to demonstrate an extraordinary need. The remainder would be distributed among states based on a formula determined by the percentage of constituents over five years old who speak a language other than English.

Kohl's bill, S. 702, was placed on the Senate Legislative Calendar in August 2008, but it failed to pass after the 110th Congress adjourned in January.

### **Limited Resources, Limited Language Access**

Lack of qualified interpreters also is a problem in legal settings outside of the courthouse.

Most of the LEP and NEP population are low income and face an additional economic barrier to accessing justice. Numerous legal services providers in the District are willing to help but are not always able to provide language access due to scarce resources.

Providers such as the APALRC, Ayuda, La Clínica del Pueblo, and others cater to non-English speakers, but organizations that do not have the same capability sometimes are forced to rely on a bilingual staff member or friends or family members of clients for interpretive services.

Lack of language access among legal services providers was one of the issues the District of Columbia Access to Justice Commission, formed by the D.C. Court of Appeals in 2005 to address the unmet civil legal needs of low-income District residents, took on when it first started lobbying for city funding.

The idea to establish a shared interpreter bank that would

recruit, train, and keep a registry of interpreters emerged from the commission's roundtable discussions with legal and social services providers, directors of community interpreter banks, and others who work with the LEP and NEP community.

After the commission successfully secured \$3.2 million from the D.C. Council to fund civil legal services, the Community Legal Interpreter Bank became a reality. Since 2006 the city has provided another \$6.8 million for civil legal services, and some of that money has been administered by the D.C. Bar Foundation to fund the interpreter bank.

The bank, which is being managed by Ayuda, started off with a pilot project from April to July 2008, and it moved on to its phase one initiative in August in which 10 legal services providers participated. The bank is now working with 16 providers and 21 interpreters, and it has a language line service for brief conversation, emergency situations, and initial screening and intake in languages for which no interpreter is available.

Interpreters are screened by the bank for experience and skill, and they are required to attend a three-day training session led by Framer of NAJIT.

The training shows community and court interpreters how to perform interpretation for legal and social services providers. While the interpreting skills required may be the same for the courtroom as they are for legal services providers, the interpreter plays a different role and follows different ethics.

"In the attorney-client relationship, the interpreter is an agent for, responsible to, and is supervised by the attorney and, therefore, is covered by attorney-client privilege and is subject to all of the ethical requirements of the attorney regarding confidentiality and communication. . . . There are also some practical differences. In the attorney-client relationship, the purpose is to have really clear communication between the attorney and the client, and so it's less formal; it's much easier in the setting for the interpreter to interrupt and say that he or she needs clarification either from the attorney or the client," bank director Jean Bruggeman says.

Despite the differences, the bank is facing the same problem confronting courts—there are simply not enough interpreters, especially in languages such as Amharic (a Semitic language spoken primarily in parts of Ethiopia) or Korean.

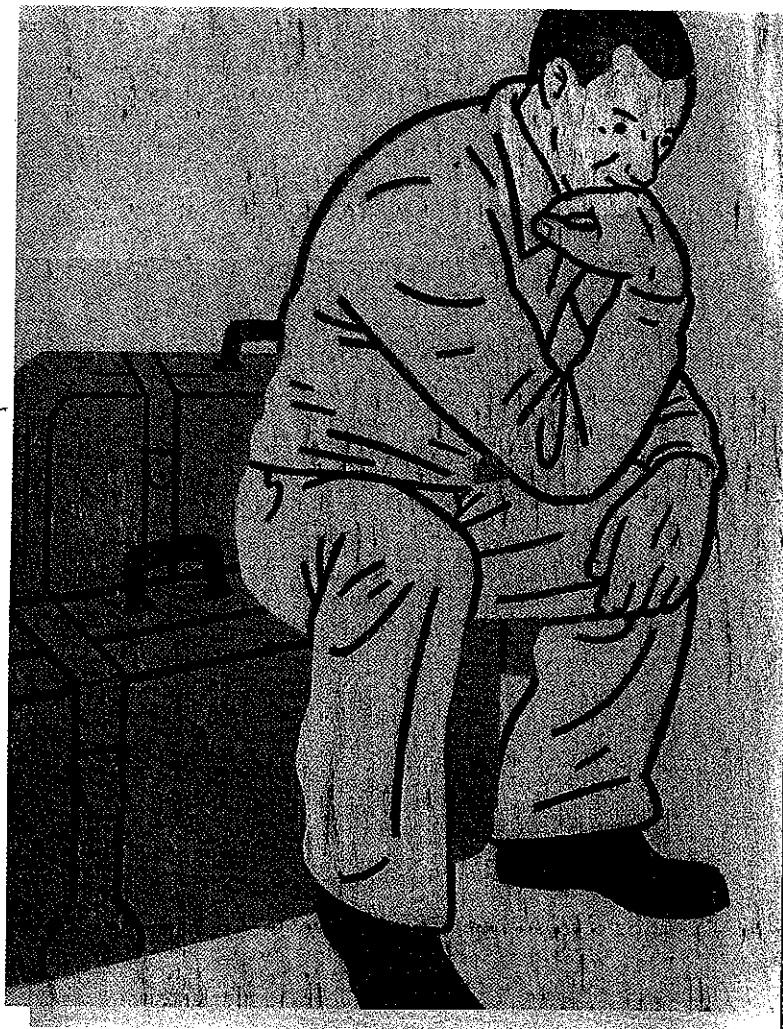
There are also not enough—or at least as many as the bank would like—legal services providers interested in coming on board with the program, something Bruggeman attributes to the newness of it all.

"I think it's going to take some time to be fully utilized for two reasons: On the one side, providers need time to train their staff on how to utilize and work with interpreters. Then there needs to be some sort of change of organizational culture from one of getting by with bilingual staff, friends or family members, or community members who come with clients to one of focusing on using professional, trained interpreters. So I think there's a cultural shift that has to happen in the legal services community. Also, legal services providers have hesitated to do a lot of outreach into LEP [and NEP] and deaf communities because they didn't have the capacity to provide adequate language interpreter resources. These communities don't know about their legal rights," she says.

Successfully educating the LEP and NEP population of their legal rights, according to Bruggeman, would require legal services providers to come together to provide comprehensive outreach.

### D.C. Language Access Act

Outreach is one of the focus areas of the D.C. Language Access Coalition, particularly educating the LEP and NEP population



about their rights under the Language Access Act.

"One of the main problems we see over and over again is that people just aren't aware of the act; they've never even heard of it," says Jennifer Hatton, an attorney at the Legal Aid Society of the District of Columbia, which is a member of the coalition.

To remedy this, the coalition has been working with the OHR, the Mayor's Office on Latino Affairs, and the Mayor's Office on Asian and Pacific Islander Affairs to hold community events aimed at educating the public. Last summer the coalition and the OHR created "Know Your Rights" cards in six languages.

Under the Language Access Act, D.C. government agencies with major public contact—35 offices so far—are mandated to provide interpretive services to LEP or NEP people, either through bilingual staff or telephonic interpretation, and in some cases provide materials translated in non-English languages spoken by a significant portion of the population they serve.

Additionally, the agencies are to collect data on the use of these services, appoint a language access coordinator, and put together a biannual language access plan.

At the time of the act's passage, the District was the third city in the country, behind Oakland and San Francisco, to pass a comprehensive language access law. Hawaii, New York, and Philadelphia have since followed suit.

Although the Language Access Act is the District's first comprehensive law regarding language access, it is not the first addressing the issue.

On the federal level, Title VI of the Civil Rights Act of 1964

# Local Language Access

## LEGAL RESOURCES

*The following is a list of some of the legal services providers in the District of Columbia that offer services in languages other than English.*

### Asian American Justice Center

[www.advancingequality.org](http://www.advancingequality.org)

Description: Assists Asian Americans through advocacy, public policy, education, and litigation.

Contact: Almee Baldillo, director of programs, at 202-296-2300, ext. 112, or [abaldillo@advancingequality.org](mailto:abaldillo@advancingequality.org)

### Asian Pacific American Legal Resource Center

[www.apalrc.org](http://www.apalrc.org)

Description: Works to advance the civil and legal rights of Asian Americans in the Washington metropolitan area through direct services, education, and advocacy.

Contact: Legal Help Line at 202-393-3572 or [helpline@apalrc.org](mailto:helpline@apalrc.org)

### Ayuda

[www.ayudainc.org](http://www.ayudainc.org)

Description: Provides legal and social assistance for low-income Latinos and foreign-born people dealing with immigration, human trafficking, domestic violence, and family law matters.

Contact: In the District, 202-387-4848. In Sterling, Virginia, 703-444-7009.

### Central American Resource Center

[www.carecencdc.org](http://www.carecencdc.org)

Description: Offers legal, educational, housing, and other services for Central Americans/Latinos living in the Washington metropolitan area.

Contact: Andrea Rodriguez, legal services program director, at 202-328-9799 or [arodriguez@carecencdc.org](mailto:arodriguez@carecencdc.org)

### D.C. Bar Pro Bono Program

[www.dcbar.org/probono](http://www.dcbar.org/probono)

Description: Works to mobilize the private bar to assist in making legal advice and representation fully available to low-income persons in the District.

Contact: Legal Information Help Line, 202-626-3499. Visit LawHelp/DC at [www.LawHelp.org/DC](http://www.LawHelp.org/DC)

### Washington Lawyers' Committee for Civil Rights and Urban Affairs

[www.washlaw.org](http://www.washlaw.org)

Description: Represents individuals and groups with claims of discrimination based on race, gender, national origin, disability, age, religion, and sexual orientation. Also assists immigrants seeking asylum.

Contact: Spanish Hotline at 202-319-1011, ext. 222.

### Women Empowered Against Violence

[www.weaveincorp.org](http://www.weaveincorp.org)

Description: Provides legal, counseling, economic, and education services to victims of domestic violence. Several Spanish-speaking staff members available.

Contact: 202-452-9550 or [info@weaveincorp.org](mailto:info@weaveincorp.org)

prohibits discrimination on the basis of race, color, and national origin, which, among other things, means federally conducted and funded programs and activities must provide meaningful access to LEP and NEP people.

Executive Order 13166, issued by President Bill Clinton in 2000, was meant to both enforce Title VI and to set forth a new language access obligation for all federally funded programs and activities.

There also is a District statute mandating that any "communication impaired" person, including anyone who doesn't speak English, involved in a civil proceeding must be provided with an interpreter, with some stipulations.

Some members of community-based and civil rights organizations in the District felt there are too many loopholes in these laws, which many people do not even know exist, and that language access was an important issue for the city to address.

The coalition started in 2002 when 25 of these organizations came together to advocate for the District's LEP and NEP population. That alliance has grown to 29 organizations. It became the major policy advocacy group behind the passage of the Language Access Act and was then written into the law as a third-party entity charged with making sure that, in the words of Deng-Pickett, "the community's voice is involved in the implementation of the law."

That task includes monitoring government compliance, which Deng-Pickett says is pretty dismal, among the 35 agencies listed under the act.

"The Office of Human Rights [which is the intergovernmental supervisory agency for the law] just put out its second compliance report, and in it they state that only one agency was in full compliance with the law and that was the Office of Human Rights; all the other agencies were in partial or full noncompliance of the law," Deng-Pickett says.

This comes as no surprise to Hatton who, in addition to working closely with the coalition, deals with public benefits in her work at the Legal Aid Society.

Hatton says she often hears about language access problems at the D.C. Department of Human Services, including clients who are not even able to get past the building's security guard, are not informed that applications for benefits are available in Spanish, or who only receive notices in English.

Speaking before the D.C. Council at a 2007 oversight committee meeting, Hatton related the story of one of her clients, an Ethiopian woman who was in the District visiting her family when she became very ill and had to go to the hospital.

The hospital signed her up for the D.C. Healthcare Alliance so she could avail of medical assistance. Upon being discharged to a rehabilitation facility, the woman's health maintenance organization (HMO), through the Alliance, decided it would only cover a certain number days of her confinement, something the client was not informed of as only a letter in English was sent to her provider. The woman only learned about the problem when the facility told her that she would have to be discharged unless she paid the rest of the costs. The woman's



"When I did more direct representation of Asian-speaking communities, I found that a lot of times once a person hears about how difficult the process of filing a complaint will be, they don't want to do it. What they want to hear is that they sign a piece of paper, they walk away, and things get resolved . . ."

—Myron Dean Quon, Asian Pacific American Legal Resource Center



family sought the assistance of the Legal Aid Society once they started receiving bills.

"While I was helping her appeal this decision, I reviewed her medical records and learned that the rehab facility never provided a professional interpreter so that my client could communicate with the doctors," Hatton says. "The records said things like 'communicated with

the patient with hand gestures or mime,' or 'used one of her relatives to interpret.' Using family members to interpret violates all kinds of confidentiality between doctor and patient. This actually had relevance to the overlying case because the reason the HMO denied payment was that they felt that she wasn't improving enough or responding enough to treatment, which raised the thought in my head, 'How did you know she wasn't responding enough if you couldn't communicate with her?'"

Even though the case ended up in a settlement with the HMO agreeing to pay the client's medical costs, Hatton says it's just another example of a language access violation evading review.

Hatton, Deng-Pickett, and APALRC Executive Director Myron Dean Quon all agree that a big part of the problem is that people are hesitant to come forward with a language access complaint.

According to Deng-Pickett, agencies received only one complaint from 2004 to 2007. Following outreach efforts by the D.C. Council and the OHR last summer, that number rose to 11 in six months.

So far, however, the Lee case is the only one that has made its way from complaint to resolution.

"When I did more direct representation of Asian-speaking communities, I found that a lot of times once a person hears about how difficult the process of filing a complaint will be, they don't want to do it. What they want to hear is that they sign a piece of paper, they walk away, and things get resolved. . . So even if they know that these laws are there, the question becomes, do they want to cause trouble?" Dean Quon says.

"We're very fortunate in that Mr. Lee was one of these people who said this is wrong and should never have happened and he just wouldn't let it go. . . It's not like there are any monetary damages we could collect. It's purely an administrative procedure to try to cause a stink, and Mr. Lee said, 'That's

fine, this should not have happened.'"

Language access cases can be somewhat tricky for attorneys in that it's difficult to know whether it's better to try and create systemic change by getting more people to file complaints that may go nowhere, or to address the client's needs directly by, for example, picking up the phone and calling the OHR and getting the client's benefits restored.

The D.C. Language Access Coalition would like to see amendments to the act to make it stronger.

"The act, while progressive, just doesn't have nearly enough enforcement mechanisms in place and doesn't have enough options for people who have had a language access violation," Hatton says. "For example, there's no right to sue. Basically, your only option is to participate in an Office of Human Rights complaint process, which is a lengthy investigation that, at the end, results in a finding of compliance or noncompliance."

After being found noncompliant of the act, the MPD was mandated to follow a timeline in which to make corrective actions such as posting visible "know your rights" information and making sure officers are trained in using its Language Line translation service.

Firozvi of the APALRC is working on two Language Access Act complaints that she hopes will result in more systemic changes. But as demonstrated by the Lee case, this area of language access is very much "learn as you go."

"This is still so new that when the Language Access Coalition comes together, we're trying to figure out whether we should bring complaints about something or should we let it escalate to a certain level before we bring a complaint," Firozvi says.

### Legal Services Providers Fill the Gap

APALRC helps other LEP and NEP Asian Americans like Lee through direct service projects such as a multilingual help line, a legal interpreter project, and assistance for victims of domestic violence.

The language help line is available in English, Hindi, Korean, Mandarin, and Urdu and staffed by law student volunteers. These volunteers work two to three hours a week returning messages, conducting intake, and passing along information to APALRC attorneys who then decide whether the case merits advice, referral, or representation.

Dean Quon and Firozvi say clients often feel more comfortable seeking legal assistance through the help line than a walk-in clinic where they could run into somebody they know.

"My perspective, coming from the South Asian community,



is that you never talk about your personal problems aloud, you just suffer and deal with it. But I don't think that's just indicative of the Asian community, I think it's true of the immigrant community in general," Firozvi says.

Even so, the D.C. Bar Pro Bono Program has seen plenty of interest in its Spanish Language Advice and Referral Clinic, which is held quarterly at the Carlos Rosario International Public Charter School in Columbia Heights and staffed by bilingual volunteers.

"There are so many different types of cases at the clinic," says Kern, one of two immigration attorneys who volunteer as clinic supervisors and mentors. "Some people are in removal proceedings; some people have to file a petition for a family member because they're trying to get a mother, spouse, or child here. Some have gotten a notice from immigration that they don't understand, some people have been granted asylum status and they want to take the next step and get their green cards, while others have their green cards and want to become citizens."

The Pro Bono Program also addresses the needs of the LEP and NEP population by making its Legal Information Help Line available in Spanish, translating legal documents into Spanish, and posting them on LawHelp.org/DC, and setting up a volunteer interpreter database that matches organizations requiring translation or interpretation services with bilingual volunteers.

Organizations such as the Women Empowered Against Violence (WEAVE) are among those that have benefitted from the pro bono language access help.

"We've had a lot of interest from pro bono attorneys who have a particular experience or interest with working with immigrants. One thing that has been really nice is diversifying our language base through these terrific pro bono attorneys who speak not just Spanish, but all kinds of other languages," WEAVE supervising attorney Elizabeth Keyes says.

While WEAVE's main mission is to provide legal services to survivors of domestic violence, it also offers counseling, economic empowerment opportunities, support groups, and outreach work.

As part of its legal service work, WEAVE has established the bilingual Emergency Domestic Relations Project at the D.C. Superior Court and, as of February 2009, at Greater Southeast Community Hospital to assist victims of domestic violence seeking temporary protection order. The organization also conducts bilingual Legal Information Clinics that are set up like an intake clinic.

Keyes says outreach work is a priority for WEAVE, particularly among immigrant communities. A WEAVE staff member has been working with Spanish language media in an effort to educate people about WEAVE services and the rights of domestic abuse survivors.

"For many people immigration status is the single biggest barrier to trying to get help. People are worried about being deported if they come forward, but if through our outreach efforts we can let people know that we might be able to sort out immigration problems and that we have lawyers who can help, that's a wonderful tool for starting to engage people in the system," Keyes says.

"[Domestic violence] is a hard thing to talk about no matter what, but when you speak another language and you're not sure people will fully understand where you're coming from, it's even harder."

*Kathryn Alfisi is a D.C. Bar staff member.*



DC BAR

PLEASE NOTE THAT AS OF

MAY 26, 2009

THE DISTRICT OF  
COLUMBIA BAR

WILL BE LOCATED AT

1101 K STREET NW  
WASHINGTON DC 20005

202-737-4700  
WWW.DCBAR.ORG

